



Claimant argues the ALJ's Order should be affirmed.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

Briefly restated, the respondent concedes claimant sustained an accidental injury to his right shoulder on April 21, 2003. That accident is the subject of an E-1 application for hearing filed with the Division of Workers Compensation on April 23, 2004. The E-1 lists the location of the accident as Leavenworth, Kansas, and lists both shoulders as having sustained injury in the accident. Medical treatment was provided to the right shoulder first at Concentra and later with Dr. Alexandra Strong, an orthopaedic physician. Dr. Strong diagnosed a full thickness tear in the right rotator cuff and performed surgery on June 23, 2003. After a period of recuperation which included physical therapy, claimant was released on February 17, 2004, to return to work with restrictions.

Claimant returned to Concentra in March 2004 complaining of left shoulder complaints. He was again referred to Dr. Strong who diagnosed a full thickness tear in the left shoulder. She took him off work March 31, 2004, and recommended surgery. Respondent has refused to provide this treatment or monetary benefits contending that claimant's April 2003 injury is limited to his right shoulder only. Respondent contends any complaints relative to the left shoulder bear no causal relationship to his work-related accident.

At the first preliminary hearing on August 10, 2004, claimant testified that as he was removing some eye bolts and using a pry bar, he noticed a pop in his right shoulder. Claimant took a break and 10 minutes later, he returned to the same task and as he was using his left shoulder, it too popped. When the eye bolts finally came out, his right arm was in extreme pain and he knew he needed to see a doctor. Claimant was asked what other parts of his body hurt at that time and he responded "Well, I had pain in my left shoulder, but my right was in so much pain it kind of overrode my left shoulder."

Claimant testified he advised Gerald Rinehart, the superintendent for his employer, and Neil Rogers, respondent's owner, that he injured both arms. He further testified he told the staff at Concentra as well as Dr. Strong and the physical therapists that he had hurt both shoulders, not just the right, but that the right was far more painful. Dr. Strong's records show a complaint regarding the left shoulder was first noted on November 18, 2003. The physical therapists records reference left shoulder complaints for the first time on January 8, 2004. Claimant denies any other accidents since April 2003 that would have caused his present complaints of pain in the left shoulder.

At the second preliminary hearing on November 2, 2004, Gerald Rinehart testified and corroborated claimant's testimony that on April 21, 2003, the claimant specifically complained of injury to both shoulders. Mr. Rinehart testified:

Q. Mr. Watson has claimed that he was involved in an accidental injury on April 21st, 2003. On April 21, 2003, did Mr. Watson tell you that he was in an accident and had injured himself?

A. Yes. I heard him scream.

Q. To the best of your recollection, do you recall what body parts Mr. Watson told you he had injured?

A. When he got down off the ladder, he indicated that his right shoulder was really killing him, you know, and his left shoulder, and he indicated that between his shoulders he was having a lot of pain also.

Q. So your recollection is that he reported injuries to both of his shoulders, and also between his shoulders on the back?

A. Yes, that's correct.

Q. I think you indicated that by Mr. Watson's own admission, that the right shoulder was worse.

A. Yes.

Q. But as you sit here today, do you recall, regardless of the level of symptomatology that Mr. Watson specifically told you, he had injured both of his shoulders, obviously including his left shoulder?

A. Yes.<sup>1</sup>

It is implicit in the ALJ's Order that claimant met his burden of proof to establish that he injured his left shoulder at work for the respondent on April 21, 2003. Because the right shoulder pain was worse, the primary complaints and treatment focused on that shoulder. After the right shoulder was treated, including surgery, the claimant then made renewed complaints regarding his left shoulder. The Board affirms the ALJ's determination that claimant has met his burden of proof to establish that he injured his left shoulder at work for respondent on April 21, 2003.

**WHEREFORE**, it is the finding of the Board that the Order of Administrative Law Judge Steven J. Howard dated November 8, 2004, is affirmed.

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<sup>1</sup> P.H. Trans. (Nov. 2, 2004) at 5-6.

**IT IS SO ORDERED.**

Dated this 30th day of December 2004.

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BOARD MEMBER

c: Keith L. Mark, Attorney for Claimant  
Christopher J. McCurdy, Attorney for Respondent and its Insurance Carrier  
Steven J. Howard, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director